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SAN FRANCISCO UNIFIED SCHOOL DISTRICT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY A. JAMES,

Plaintiff,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

Defendant.

Case No. 4:18-cv-04448-YGR

STIPULATED PROTECTIVE ORDER

As Modified by the Court

Hon. Yvonne Gonzalez Rogers

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in

1 this action.

2 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does
3 not include Outside Counsel of Record or any other outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
5 not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but
7 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
8 party or are affiliated with a law firm which has appeared on behalf of that party.

9 2.10 Party: any party to this action, including all of its officers, directors, employees,
10 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
12 this action.

13 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
14 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
15 retrieving data in any form or medium) and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL.” This includes, but is not necessarily limited to, material that constitutes confidential
18 employment records of third parties to the above captioned case and/or constitutes “pupil records” and
19 “education records” as defined in Cal. Ed. Code § 49061(b) and 20 U.S.C. § 1232g (FERPA).

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
21 Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material (as
24 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
25 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
27 conferred by this Stipulation and Order do not cover the following information: (a) any information that is
28 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain

after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

1 Material that qualifies for protection under this Order must be clearly so designated before the material is
2 disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
5 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
6 “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the
7 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents or materials available for inspection need not
10 designate them for protection until after the inspecting Party has indicated which material it would like
11 copied and produced. During the inspection and before the designation, all of the material made available
12 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
13 documents it wants copied and produced, the Producing Party must determine which documents, or
14 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,
15 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected
16 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party
17 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating
19 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected
20 testimony.

21 (c) for information produced in some form other than documentary and for any other tangible
22 items, that the Producing Party affix in a prominent place on the exterior of the container or containers in
23 which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of
24 the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the
25 protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
27 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
28 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party

1 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation
6 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
7 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
8 designation by electing not to mount a challenge promptly after the original designation is disclosed.

9 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution process by
10 providing written notice of each designation it is challenging and describing the basis for each challenge.
11 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
12 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
13 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
14 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
15 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
16 belief that the confidentiality designation was not proper and must give the Designating Party an
17 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
18 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
19 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
20 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
21 manner.

22 **6.3 Judicial Intervention.** **If the Parties cannot resolve a challenge without court**
23 **intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding Discovery**
24 **and Discovery Motions. The parties may file a joint letter brief regarding retaining confidentiality**
25 **within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet**
26 **and confer process will not resolve their dispute, whichever is earlier. Failure by a Designating Party**
27 **to file such discovery dispute letter within the applicable 21 or 14 day period (set forth above) with**
28 **the Court shall automatically waive the confidentiality designation for each challenged designation.**

1 If, after submitting a joint letter brief, the Court allows that a motion may be filed, any such motion
2 must be accompanied by a competent declaration affirming that the movant has complied with the
3 meet and confer requirements imposed in the preceding paragraph. The Court, in its discretion,
4 may elect to transfer the discovery matter to a Magistrate Judge.

5 In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality
6 designation at any time if there is good cause for doing so, including a challenge to the designation
7 of a deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court
8 allows that a motion may be filed, any motion brought pursuant to this provision must be
9 accompanied by a competent declaration affirming that the movant has complied with the meet and
10 confer requirements imposed by the preceding paragraph. The Court, in its discretion, may elect to
11 refer the discovery matter to a Magistrate Judge.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
13 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
14 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
15 Designating Party has waived the confidentiality designation by failing to file a letter brief to retain
16 confidentiality as described above, all parties shall continue to afford the material in question the
17 level of protection to which it is entitled under the Producing Party's designation until the court rules
18 on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
20 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
21 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
22 persons and under the conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
25 manner that ensures that access is limited to the persons authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
27 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
28 item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said
2 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
3 and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
4 A;

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
6 whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
7 and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
9 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
10 (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed
14 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
16 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
17 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
18 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and
19 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information or a custodian or other person
21 who otherwise possessed or knew the information.

22
23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
24 LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure
26 of any information or items designated in this action as "CONFIDENTIAL," that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the
28 subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
2 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
3 Order. Such notification shall include a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
5 Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court
7 order shall not produce any information designated in this action as “CONFIDENTIAL” before a
8 determination by the court from which the subpoena or order issued, unless the Party has obtained the
9 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material – and nothing in these provisions should be construed
11 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
12 court.

13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
14 LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-Party in this action
16 and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this
17 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should
18 be construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
20 confidential information in its possession, and the Party is subject to an agreement with the Non-Party not
21 to produce the Non-Party’s confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the
23 information requested is subject to a confidentiality agreement with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation,
25 the relevant discovery request(s), and a reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
28 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s

confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or

1 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right
2 to object on any ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the Designating Party or a court
4 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
5 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
6 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
7 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
8 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
9 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request
10 to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
11 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless
12 otherwise instructed by the court.

13 13. FINAL DISPOSITION

14 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
15 Party must return all Protected Material to the Producing Party or destroy such material. As used in this
16 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other
17 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned
18 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the
19 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,
20 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
21 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
22 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
23 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
24 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
25 consultant and expert work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
27 Section 4 (DURATION).

28 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1
2 Dated: February 15, 2019

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

3
4 By: /s/ Ethan Lowry
Eugene B. Elliot
Ethan M. Lowry
Marina I. Garcia
Attorneys for Defendant
5
6 SAN FRANCISCO UNIFIED SCHOOL DISTRICT
7

8 Dated: February 15, 2019

9 By: /s/ Timothy James
10 Timothy A. James
11 Pro Se Plaintiff
12

13 **ATTORNEY ATTESTATION**


14 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
15 conformed signature (“/s/”) within this E-filed document or have been authorized by Plaintiff to show their
16 signature on this Stipulated Protective Order as /s/.
17

18 Dated: February 15, 2019

By: /s/ Ethan Lowry
Ethan M. Lowry
19
20
21

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23
24 DATED: February 21, 2019


Yvonne Gonzalez Rogers
UNITED STATES DISTRICT JUDGE
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or type full
4 address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated
5 Protective Order that was issued by the United States District Court for the Northern District of California
6 on [date] in the case of **James v. San Francisco Unified School District; Case No. 4:18-cv-04448-YGR.**
7 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
8 and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
9 contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject
10 to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions
11 of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern District of
13 California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
14 enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as my
17 California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare that I am employed in the County of San Francisco, California; I am
3 over the age of eighteen years and not a party to the within cause; and my business address is 2749 Hyde
4 Street, San Francisco, California 94109.

5 I am readily familiar with the practice of Bertrand, Fox, Elliot, Osman & Wenzel with respect to
6 the collection and processing of pleadings, discovery documents, motions and all other documents which
7 must be served upon opposing parties or other counsel in litigation. On the same day that correspondence
8 is placed for collection and mailing, it is deposited in the ordinary course of business with the United States
9 Postal Service in a sealed envelope with postage fully prepaid.

10 On **February 15, 2019**, I served the following document:

11 **STIPULATED PROTECTIVE ORDER**

12 on the following interested parties:

13 Timothy A. James
14 2407 Ransom Avenue
15 Oakland, California 94601

Plaintiff in Pro Per

16 Said service was performed in the following manner:

17 (✓) **BY U.S. POSTAL SERVICE (Mail):** I placed each such document in a sealed envelope addressed
18 at noted above, with first-class mail postage thereon fully prepaid, for collection and mailing at San
19 Francisco, California, following the above-stated business practice, on this date.

20
21 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
22 and correct. Executed **February 15, 2019**, at San Francisco, California.

23
24 /s/ L Roberts

25 L Roberts
26
27
28